**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1875 OF 2007

Gulab Jethanand Khemnani. ..Petitioner.
Versus
State of Maharashtra
and 2 Ors. ..Respondents.

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Ms.Rebeeca Gonsalves, Adv. for the Petitioner.

Mrs.U.V.Kejariwal, APP, for the State.

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**CORAM : R.M.S.KHANDEPARKAR AND SMT.V.K.TAHILRAMANI,JJ.**

**DATED : OCTOBER 19, 2007.**

**P.C.:-**

1. Heard.

2. In the present Petition, the petitioner is seeking quashing of order dated 16th July, 2007 passed by the Superintendent of Yerwada Central Prison, Pune-6 whereby on account of delay in returning to the prison after availing furlough leave, there has been order that 80 days shall be deducted from the petitioner's remission. It is the contention of the petitioner that though

the petitioner did not return to the jail in time, the period which was spent by the petitioner outside the jail beyond the period of furlough leave was condoned pursuant to the order of this Court in Criminal Writ Petition No.64 of 2004 wherein by way of interim relief the petitioner was allowed to remain outside the prison.

3. It is not in dispute that the petitioner was granted furlough leave for two weeks on 17th December, 2003 and thereafter it was extended for two weeks on 15th January, 2004. However, he did not return to the jail on expiry of the said period. Instead he filed Writ Petition requesting for direction for extension of his leave as his further request for extension was refused. During pendency of the Writ Petition by way of interim relief the petitioner was permitted to remain outside the jail pending hearing and final disposal of the said petition. The said Petition came to be disposed of by order dated 30th January, 2004 with further requiring the petitioner to surrender on 31st

January, 2004. Considering the same, the petitioner is justified in contending that the period which was spent by him out of the jail beyond the period of furlough leave was condoned by order of this Court which was passed during pendency of the said Petition permitting the petitioner to remain outside the prison. Hence the authorities could not have deducted 80 days from the remission of the petitioner on the alleged ground of delay on his part to return to the prison on expiry of the furlough leave period. In the circumstances, therefore, the impugned order cannot be sustained and is liable to be set-aside and accordingly is set-aside. Consequently, the amount of deposit shall be returned to the petitioner and the surety bond, if any, shall stands cancelled. Petition is accordingly disposed of with no order as to costs.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]